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No. 98985-1

SUPREME COURT OF THE STATE OF WASHINGTON

THE FAMILY OF DAMARIUS BUTTS, et al.,

Respondents/Cross-Appellants,

v.

DOW CONSTANTINE, in his official capacity as King County
Executive, et al.,

Appellants/Cross-Respondents.

BRIEF OF PUBLIC HEALTH AMICI

Isaac Ruiz, WSBA #35237
Kathryn M. Knudsen, WSBA #41075
RUIZ & SMART PLLC
95 S. Jackson St., Ste. 100
Seattle, WA 98104
Telephone: (206) 203-9100
Facsimile: (206) 785-1702
iruiz@plaintifflit.com
kknudsen@plaintifflit.com
Attorneys for Amici

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I. IDENTIFICATION OF AMICI CURIAE

Amici are professionals and organizations committed to improving the public health of our communities. The list of public-health amici is provided as Appendix A.

II. INTRODUCTION

Amici submit this Brief in support of King County’s reformed inquest process, the purpose of which is to examine, in a public forum, the facts surrounding the death of a person at the hands of law enforcement. King County’s inquest reforms are a culmination of community advocacy and engagement with diverse stakeholders, including law enforcement, and should be upheld. Amici also support bringing King County’s inquest process into full compliance with state law as requested by the families of Damarius Butts, Isaiah Obet, and Charleena Lyles. Together, the improvements on the inquest process are modest but nonetheless important steps forward for police accountability.

Police violence affects people of all races, but it disproportionately affects communities of color and particularly Black and Indigenous communities. Police violence is a legal and moral issue, but it is also a “*public health issue* with widespread health impacts for individuals and

communities.”¹ It is a public-health crisis that has existed much longer than the COVID-19 pandemic, but one that cannot be addressed with a vaccine. Challenges to addressing public-health issues involving police violence include police culture that deters internal accountability; the localized, multi-jurisdictional nature of law enforcement; collective bargaining processes that can serve as bottlenecks to reform; and other legal obstacles to accountability. These challenges—like the challenges to the strengthened inquest process before the Court—should be viewed not merely through a legal lens, but they should be addressed in the context of the intractable public-health crisis of police violence. These are obstacles to mitigating and eventually eliminating deaths, harm to mental health, and other adverse health effects that are hurting communities of color.

The Immediate Past Chair and Immediate Past President of the American Medical Association wrote recently: “Excessive police force is a communal violence that significantly drives unnecessary and costly injury, and premature morbidity and death. Our country—our society—demands more.”² “The ultimate defense against police violence in times of

¹ Osagie K. Obasogie & Zachary Newman, *Police Violence, Use of Force Policies, & Public Health*, *American Journal of Law & Medicine*, Vol. 43, at 279, 280 (2017).

² Jesse M. Ehrenfeld, M.D., M.P.H., & Patrice A. Harris, M.D., M.A., *Police Brutality Must Stop*, American Medical Association (May 29, 2020), <https://www.ama-assn.org/about/leadership/police-brutality-must-stop> (accessed Dec. 17, 2020).

public health crisis, and beyond, is centering equity and ensuring accountability as a public health measure.”³

The present cross appeals offer the Court an opportunity to recognize the authority and responsibility of counties and their executives to act boldly to strengthen police accountability and improve the health of our community.

III. ANALYSIS

A. POLICE VIOLENCE AGAINST COMMUNITIES OF COLOR IS AN IMPORTANT PUBLIC-HEALTH MATTER.

The Justices of this Court, in their letter of June 4, 2020, to members of the judiciary and the legal community, remarked about systemic racism, including racialized policing:

The devaluation and degradation of black lives is not a recent event. It is a persistent and systemic injustice that predates this nation’s founding. But recent events have brought to the forefront of our collective consciousness a painful fact that is, for too many of our citizens, common knowledge: the injustices faced by black Americans are not relics of the past. We continue to see racialized policing and the overrepresentation of black Americans in every stage of our criminal and juvenile justice systems. Our institutions remain affected by the vestiges of slavery: Jim Crow laws that were never dismantled and racist court decisions that were never disavowed.⁴

³ *Id.*

⁴ Justices of the Supreme Court of Washington, Letter to Members of the Judiciary & Legal Community, June 4, 2020.

The Justices correctly identified the nature of the problem (the “devaluation and degradation of black lives”), its intractability (“predates the nation’s founding”), and the legal structures that have supported it (“Jim Crow laws,” “racist court decisions”). The resulting harm to Black lives and the lives of other persons of color is multi-generational—a fact long understood by these communities but only now becoming a part of our national consciousness.⁵

The death of a community member—the most severe health outcome from police violence—is just one dimension of the damage. The loss of a parent, a child, a sibling, a friend, and a neighbor causes incalculable suffering to those who survive and their communities. “The mental health effects of police violence may be less visible yet much more pervasive and, potentially, more impactful when considered across an entire community or population.”⁶ According to Jacob Bor, Artheendar S. Venkataramani, David R. Williams, and Alexander C. Tsai, writing in *The Lancet*, “Our estimates suggest that police killings of unarmed black

⁵ “Although Black, Latinx, Native American, and sexual and gender minority communities have long perceived a culture of inequitable treatment, it is only with the widespread adoption of smartphone technology and real-time dissemination of footage through social media that this has become part of the national consciousness.” Jordan DeVyder, Ph.D. et al., *Impact of Police Violence on Mental Health: A Theoretical Framework*, *American Journal of Public Health*, Vol. 110, No. 11, at 1704 (Nov. 2020).

⁶ *Id.*

Americans have a meaningful population-level impact on the mental health of black Americans. ... Our results point to the importance of structural racism as a driver of population health disparities.”⁷

Racialized police violence, short of death, raises significant public-health concerns as well. For example, the “exposure to assaultive forms of police violence (*i.e.*, physical or sexual) has been found to be associated with 4- to 11-fold greater odds for suicide attempts among adults across racial/ethnic groups, even with conservative adjustments.”⁸ Increased police encounters are “linked to elevated stress and anxiety levels, along with increased rates of high blood pressure, diabetes and asthma—and fatal complications of those comorbid conditions.”⁹

Police violence harms the health not just of the individual, but also the community. According to Dr. Jordan DeVlyder, Dr. Lisa Fedina, and Dr. Bruce Link, writing in a peer-reviewed article published by the *American Journal of Public Health*:

Cross-sectional studies have consistently found clinically and statistically significant associations between police violence exposure and a range of mental health outcomes, and community-level data have likewise demonstrated higher rates of mental health symptoms in neighborhoods or cities in which police abuse (e.g., “stop and frisk”

⁷ Jacob Bor et al., *Police Killings & their Spillover Effects on the Mental Health of Black Americans: A Population-Based, Quasi-Experimental Study*, *The Lancet*, Vol. 392, Page 302, at 308 (July 28, 2018).

⁸ DeVlyder et al., *supra*, at 1705.

⁹ Ehrenfeld & Harris, *supra*.

practices, which are primarily used in neighborhoods predominantly composed of people of color) and killings of unarmed civilians are more common.¹⁰

Hannah Cooper and Mindy Fullilove, writing in the *Journal of Urban Health*, observe that residents of neighborhoods with higher rates of stop and frisk are more likely to be in poor health.¹¹

Dr. Lisa Bowleg and her co-authors, in another peer-reviewed article in the *American Journal of Public Health*, also connect racialized policing to mental-health harms in affected communities:

Among the small group of studies documenting the harmful impact of aggressive policing on health are those that show that living in neighborhoods where police use more aggressive pedestrian stop and frisks is significantly associated with negative health outcomes for Black and Latino residents; that Black and Latino men who report more frequent police encounters, particularly those perceived as more intrusive and unfair, report higher rates of trauma and anxiety; and that frequent reports of discriminatory police and law enforcement encounters are associated with higher depressive symptom scores among Black men.¹²

The fact that police violence against communities of color is a public-health issue is unassailable.

¹⁰ *Id.* (footnotes omitted).

¹¹ Hannah L.F. Cooper & Mindy Fullilove, *Excessive Police Violence as a Public Health Issue*, *Journal of Urban Health: Bulletin of the N.Y. Academy of Medicine*, Vol. 93, Suppl. 1, at S2 (2016).

¹² Lisa Bowleg, Ph.D. et al., *Negative Police Encounters & Police Avoidance as Pathways to Depressive Symptoms Among U.S. Black Men, 2015–2016*, *American Journal of Public Health*, Vol. 110, No. S1, at S161 (2020).

B. BARRIERS TO POLICE ACCOUNTABILITY MAKE A UNIFIED RESPONSE TO THIS PUBLIC HEALTH ISSUE ELUSIVE.

Just as the field of public health has worked to reduce smoking and increase the use of car seatbelts, there must be a concerted, public-health approach to address police violence. It should be recognized that, from a public-health perspective, police violence is different from other violence and requires its own, specialized response. The credible and substantial inquest process is one step.

Dr. DeVyllder, Dr. Fedina, and Dr. Link theorize that eight factors cause police violence to be so impactful for mental-health outcomes:

(1) police violence is state-sanctioned; (2) police are a pervasive presence; (3) there are limited options for recourse; (4) police culture deters internal accountability; (5) police violence alters deeply held beliefs; (6) the disproportionate exposure toward people of color, many of which are poor, can underscore a sense of diminished value within U.S. racial and class hierarchies; (7) police violence is stigmatizing; and (8) police are typically armed.¹³

The connection between these factors, which increase harm to mental health, and the existing and well-understood barriers to

¹³ DeVyllder et al., *supra*, at 1705–08.

accountability is apparent. It is true, as it stands, that the options for “recourse” are limited, and that legal structures are often employed to slow and stymie meaningful change. A recent example involves the heralded accountability reforms enacted by the Seattle City Council in 2017.¹⁴ The product of years of community activism and negotiations with political and law-enforcement leaders, the legislation passed muster with the federal district court overseeing the consent decree, only to see it dramatically weakened as a result of negotiations with police unions.¹⁵

The present case is also an example of the barriers to accountability. The promise of a strengthened inquest process was hailed by diverse voices including Andre Taylor (Not This Time!), James Schrimpscher (Lodge 27 President of the Washington Fraternal Order of Police), and Diane Narasaki (Executive Director, Asian Counseling and Referral Service).¹⁶ Almost immediately, several cities, the King County

¹⁴ See Steve Miletich, *Seattle City Council Passes Historic Police-Accountability Legislation*, SEATTLE TIMES (May 22, 2017), <https://www.seattletimes.com/seattle-news/crime/seattle-city-council-passes-historic-police-accountability-legislation/> (accessed Dec. 17, 2020).

¹⁵ See Mike Carter & Steve Miletich, *Federal Judge Finds Seattle Partly Out of Compliance with Police-Reform Deal—A Major Blow to City*, SEATTLE TIMES (May 15, 2019), <https://www.seattletimes.com/seattle-news/federal-judge-finds-seattle-partially-out-of-compliance-with-police-reform-agreement-dealing-major-blow-to-the-city/> (accessed Dec. 17, 2020).

¹⁶ Dow Constantine, *Executive Constantine Announces New Process for Police Inquests*, (Oct. 3, 2018), <https://www.kingcounty.gov/elected/executive/constantine/news/release/2018/October/03-inquest-reform.aspx> (accessed Dec. 17, 2020).

Sheriff, and officers who killed community members filed legal challenges seeking to undo the reforms. The legal challenges are costly and lengthy and have resulted in the delay of inquests.

In our system of law, legal challenges raised by those against the reformed inquest process are entitled to consideration. But it must be recognized that judicial review is occurring in the context of a public-health crisis, and King County’s response should be viewed not as ordinary governmental action but rather action taken in a time of crisis. That the situation has persisted for centuries does not make it any less urgent. Every impediment to accountability—whether it be internal police culture, a legal challenge, or something else—is an impediment to a unified response to police violence and must be addressed.

C. PUBLIC-HEALTH LAWS ARE LIBERALLY CONSTRUED.

Under Washington law, public-health statutes and the actions of local officials implementing those statutes should be liberally construed.¹⁷ In the context of the AIDS crisis, this Court held: “The legislatively delegated power to cities and health boards to control contagious diseases gives them extraordinary power which might be unreasonable in another context.”¹⁸ “Indeed, we have said the subject matter and expediency of

¹⁷ *Spokane Cty. Health Dist. v. Brockett*, 120 Wn.2d 140, 149, 839 P.2d 324 (1992).

¹⁸ *Id.*

public health disease prevention measures are beyond judicial control, except as they may violate some constitutional right guaranteed to defendants.”¹⁹ In the view of Amici, the public-health crisis of police violence—as entrenched, intractable, and harmful as it has proven to be—requires a public-health response and should be treated as such when the Court considers the parties’ arguments in this case.

D. KING COUNTY’S REFORMED INQUEST PROCESS SEEKS TO IMPROVE PUBLIC HEALTH THROUGH POLICE ACCOUNTABILITY.

King County’s laws mandating inquests involving deaths caused by law enforcement are, by their nature, public-health laws. Chapter 36.24 of the Revised Code of Washington authorizes the county coroner to:

hold an inquest if the coroner suspects that the death of a person was unnatural, or violent, or resulted from unlawful means, or from suspicious circumstances, or was of such a nature as to indicate the possibility of death by the hand of the deceased or through the instrumentality of some other person.²⁰

An inquest obtains “an objective, nonpartisan, and independent opinion on the cause of death and the circumstances surrounding the death.”²¹ In King County, the coroner’s duties were first vested in the Department of Public Health.²² Subsequently, an ordinance created a division of the medical

¹⁹ *Id.*

²⁰ RCW 36.24.020.

²¹ *Miranda v. Sims*, 98 Wn. App. 898, 903, 991 P.2d 681 (2000).

²² *Carrick v. Locke*, 125 Wn.2d 129, 134, 882 P.2d 173 (1994).

examiner within the Department of Health and assigned all of the coroner's duties to the medical examiner,²³ except that it committed the responsibility of conducting inquests to the County Executive.²⁴ The King County Charter creates a mandatory responsibility to conduct inquests "to investigate the causes and circumstances of any death involving a member of the law enforcement agency of the county in the performance of the member's duties."²⁵

Following the death of Damarius Butts, Isaiah Obet, Charleena Lyles, and at least 10 other police killings in 2017 in King County alone, community leaders, law-enforcement representatives, and surviving families came together to demand changes to King County's inquest process. On October 3, 2018, King County Executive Dow Constantine signed an executive order adopting many of the reforms sought by community organizations.

County Executive Constantine remarked at the time: "I believe the new Executive Order will provide families, law enforcement officers, and community members with greater transparency and accountability."²⁶ "[I]t will give the public more confidence in the inquest process, and it will

²³ *Id.*

²⁴ King County Code § 2.35A.090.B.

²⁵ King County Charter § 895.

²⁶ Constantine, *supra*.

give law enforcement and policy-makers greater ability to reflect on how training and policies come into play in often difficult situations, and how they may be improved.”²⁷ A strong and credible inquest promotes accountability and makes systemic improvements possible to prevent future deaths.

The process that culminated in the executive order was, itself, noteworthy. In the *Final Report on The President’s Task Force on 21st Century Policing*, President Barack Obama’s task force stated, as its first pillar: “Building trust and nurturing legitimacy on both sides of the police/citizen divide is the foundational principle underlying the nature of relations between law enforcement agencies and the communities they service.”²⁸ The inquest reforms are an example of this. They are a collaborative product of diverse voices, including law enforcement and community organizations—the latter of which included organizations that provide health services to communities of color.

James Schrimsher, Lodge 27 President of the Washington Fraternal Order of Police, stated: “The new executive order on inquests is another example of what can happen when law enforcement and

²⁷ *Id.*

²⁸ *Final Report of the President’s Task Force on 21st Century Policing* at 1 (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (accessed Dec. 17, 2020).

communities work together. Fraternal Order of Police appreciates the efforts made by all parties to come to the table to reform this process in King County.”²⁹ Diane Narasaki, then the Executive Director of Asian Counseling and Referral Service, added: “I am proud to represent a coalition of 24 community groups and leaders, including organizations from all communities of color as well as the broader community, who came together with the goal of creating a fairer, more transparent inquest process in King County.”³⁰

The inquest process continues to evolve as a result of engagement with law enforcement, community members, and the approval by voters of Charter Amendment No. 1. In significant ways, the changes address obvious shortcomings to the prior inquest practice. Under the adopted reforms, inquests are made more publicly accessible; evidence is not presented by a prosecutor, but by an attorney pro tem; subpoena power is made available to obtain necessary information from witnesses, including law-enforcement officers; and the inquest jury may now consider issues of bias and express views on how deaths in similar circumstances may be prevented in the future.³¹ These changes are a step in the right direction

²⁹ Constantine, *supra*.

³⁰ *Id.*

³¹ CP 703–05, 710–23; *see also* CP 1446–47 (2020 EO App. 1 § 8.5., regarding subpoena power).

from the point of view of public health because they promote consideration of relevant data, increase transparency, and look to the prevention of future violence and harm.

E. THE INQUEST PROCESS SHOULD BE STRENGTHENED FURTHER.

The improvements adopted by King County are incremental and necessary, but they are not the end of the story. Remaining weaknesses in the process are identified in the writs requested by the families of Damarius Butts, Isaiah Obet, and Charleena Lyles.

Section 36.24.050 of the Revised Code of Washington states, in relevant part, “The coroner must summon and examine as witnesses, on oath administered by the coroner, every person, who, in his or her opinion or that of any of the jury, has any knowledge of the facts.” Because officers involved in a killing obviously have “knowledge of the facts,” the inquest process must provide for officer subpoenas. What is more, RCW 36.24.070 governs the verdict of the inquest jury, stating that

the jury shall render its verdict and certify the same in writing signed by the jurors, and setting forth who the person killed is, if known, and when, where and by what means he or she came to his or her death; or if he or she was killed, or his or her death was occasioned by the act of another by criminal means, who is guilty thereof, if known.

The inquest process must—upon a complete presentation of the evidence—require a verdict from the jury declaring the means by which

the killing occurred and whether the killing “was occasioned by the act of another by criminal means” and “who is guilty thereof, if known.”³²


An inquest that lives up to King County’s responsibilities—one that results in a complete exploration of evidence, occurs publicly, and ends with findings into the causes and legality of a police killing—brings greater transparency, accountability, and opportunities to learn and improve outcomes. Inquests that fulfill the mandates of state law will begin to address the public-health harms of police killings.

IV. CONCLUSION

Police violence is a public-health issue that requires a public-health response. Improvements to the inquest process, while modest and incremental, should be upheld, and the pending inquests should be permitted to proceed.

RESPECTFULLY SUBMITTED this 18th day of December,
2020.

RUIZ & SMART PLLC

By  _____
Isaac Ruiz, WSBA #35237
Kathryn M. Knudsen, WSBA #41075

Attorneys for Amici

³² RCW 36.24.070.

CERTIFICATE OF SERVICE

I hereby certify that on December 18, 2020, I electronically filed the foregoing document with the Clerk of the Court using the electronic filing system which will send notification of such filing to the following electronic filing system participants:

Evan Bariault	ebariault@freybuck.com
Amy K. Parker	amy.parker@kingcounty.gov
Susan Sobel	Susan.sobel@kingcounty.gov
Thomas P. Miller	tom@christielawgroup.com
	Beth@christielawgroup.com
Stewart Estes	Setes@kbmlawyers.com
	Tcaceres@kbmlawyers.com
Theron Buck	tbuck@freybuck.com
	dfalkowski@freybuck.com
La Rond Baker	lbaker@kingcounty.gov
	calburas@kingcounty.gov
Adrien Leavitt	Adrien.leavitt@kingcounty.gov
Prachi Dave	Prachi.dave@kingcounty.gov
David J. Hackett	David.hackett@kingcounty.gov
Karen L. Cobb	kcobb@freybuck.com
Thomas W. Kuffell	Thomas.kuffel@kingcounty.gov
Samantha Dara Kanner	Samantha.kaer@kingcounty.gov
Asti M. Gallina	astilgallina@foster.com
	litdocket@foster.com
Timothy J Filer	tim.filer@foster.com
Corey W. Guilmette	Corey.guilmette@defender.org
Matt Anderson	Matt.anderson@kingcounty.gov
Dee Sylve	dee.sylve@kingcounty.gov

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 18th day of December, 2020.



Shannon K. McKeon, Legal Assistant

APPENDIX A: LIST OF AMICI

1. Benjamin Danielson, MD
Clinic Chief, Odessa Brown Medical Clinic; Senior Medical Director, Odessa Brown Children's Clinic and Central Region; Janet and Jim Sinegal Endowed Chair for the Odessa Brown Children's Clinic
Academic Title: Clinical Professor
Seattle Children's Odessa Brown Children's Clinic
206.987.7200
bsdanielson@gmail.com
2. Tiffany Wang, MD
tiffanywang1128@gmail.com
3. Leah A. Haseley, MD
Clinical Professor of Medicine
University of Washington and Harborview Medical Center
lhase@uw.edu
4. Zoe Sansted, MD, MBA
Chief Resident
Family Medicine, University of Washington Medicine
203.722.7152
zsansted@uw.edu
5. Dan Otter MPH, BSN, RN
802.27.21181
danotter@gmail.com
6. Carolanne Sanders, MPH
214.335.0614
c.anne.sanders@gmail.com
7. Susan E. Collins, PhD
Licensed clinical psychologist
Codirector, Harm Reduction Research and Treatment (HaRRT) Center
Professor, Department of Psychology, Washington State University
Affiliate Professor, Department of Psychiatry and Behavioral Sciences, University of Washington School of Medicine
Adjunct Affiliate Professor, Department of Psychology, University of Washington
206.832.7885
scollins370@gmail.com

8. Omid Bagheri Garakani, MPH
Clinical Faculty, University of Washington School of Public Health
562.204.6643
omidbg@uw.edu
9. Aisling Zhao, MD
Aislingzhao@Gmail.com
10. Alecia Stewart, DO
Alecia.Stewart@Swedish.org
11. Alex Kivimaki, MD
Ahkivimaki@Gmail.com
12. Alice Tin, MD, MPH
Alice.h.tin@Gmail.com
13. Celina Hayashi, MD
Celinahayashi@Gmail.com
14. Emily Jones, MD
Jonesemilye@Gmail.com
15. Emma Makoba, MD
Emma.Makoba@Swedish.org
16. Farah Abdul, MD
Farah.Abdul@Swedish.org
17. Janelle Lee, MD
Janelleblee@Gmail.com
18. Jen Flament, MD
Jmcflament@Gmail.com
19. Jenny Giang-Griesser, MD
Giangjt@Gmail.com
20. Jessica Guh, MD
Jessica.Guh@Swedish.org
21. Josh Doppelt, MD
Joshua.doppelt@Swedish.org
22. Julia V. Ramos, MD
Julia.Ramos@Swedish.org

23. Julia Wang, MD
Julia.d.wang@Swedish.org
24. Julie Do, MD
Juliedo26@Gmail.com
25. Kara Harvill, MD
Karahar@Gmail.com
26. Kristin J. Anderson, MD, MPH
Kristin.Anderson4@Swedish.org
27. Kristina Orbe, MD
Kristinaorbe@Gmail.com
28. Laurie E. Bazan, MD
Lauriebazan@Gmail.com
29. Linda C. Yang, MD
Lindacy017@Gmail.com
30. Lindsey Youngquist
Youngquist.lindsey@Gmail.com
31. Mary Puttmann-Kostecka, MD, MSc
Mary.m.puttmann@Gmail.com
32. Matthew Markey-Crimp, MD
Matthew.Markey-Crimp@Swedish.org
33. Michael X. Gonzales, MD
Michael.Gonzales@Swedish.org
34. Mollie Nisen, MD
Mollie.Nisen@Gmail.com
35. Neha Bakhai, MD
Nehabakhai@Gmail.com
36. Rozanna Fang, MD
Rozannaf@Gmail.com

37. Sam Rennebohm, PhD, Clinical Psychologist
Samuel.Rennebohm@Swedish.org
38. Sarah E. Lloyd, MD
Sarah.e.lloyd74@Gmail.com
39. Zoe Ginsburg, MD
Zoeginsburg@Gmail.com
40. Aaron Katz
Principal Lecturer Emeritus, University of Washington School of Public Health
206.550.2277
abkchezgarlic@gmail.com
41. Amy Hagopian, PHD
Professor
Director, Community Oriented Public Health Practice
University of Washington School of Public Health
206.616.4989
hagopian@uw.edu
42. Miranda Vargas, MPH
Neighborhood Health
Clinic Administrator
610.952.8704
miranda.vrgs@gmail.com
43. Bud Nicola, MD, MHSA, FACPM
Affiliate Professor
Department of Health Services
University of Washington School of Public Health
206.245.5971
budnicola@gmail.com
44. Mx. Caro Johnson, MPH
Public Health Advocate
931.263.2658
cmayjohnson@gmail.com
45. Mandy Sladky, RN, MSN, CARN
Public health nurse
mandysladky@gmail.com
46. Maria Yang, MD
Psychiatrist and Medical Director of a homelessness and behavioral health agency
mariayang@hey.com

47. Lonnie A. Nelson, PhD
Descendant of the Eastern Band Cherokee (Ani Kituwah)
Associate Professor
Partnerships for Native Health
Initiative for Research and Education to Advance Community Health (IREACH)
Washington State University
lonnie.nelson@wsu.edu
48. Bob Crittenden, MD, MPH
Health Policy Advisor
Professor Emeritus, University of Washington
Former Senior Health Policy Advisor, Office of the Governor
bcrittendenha@gmail.com
49. Glenna Martin, MD, MPH
Carolyn Downs Family Medical Center
glennacm@gmail.com
50. William (Bill) Daniell, MD MPH
Associate Professor Emeritus
Department of Environmental & Occupational Health Sciences
Faculty, Community Oriented Public Health Practice MPH Program
School of Public Health
University of Washington
billdaniell@gmail.com
51. Jeremia Bernhardt, MD
Jeremia.Bernhardt@swedish.org
52. Barry Saver, MD
Clinical Professor of Family Medicine at the University of Washington
Barry.Saver@Swedish.org
53. Kevin Wang, MD
Faculty, Swedish Family Medicine - First Hill
Medical Director, Swedish LGBTQI+ Initiative
kevin.wang@Swedish.org
54. Alexandra Giselle Argento-Berrio, MD
Family Physician, Swedish First Hill
Alexandra.Argento-Berrio@Swedish.org
55. Lara Wilson, MD
Family Physician, Swedish Family Medicine - First Hill

Lara.Wilson@Swedish.org

56. Julia “Jay” Ruby, MD
Family Physician, Swedish Family Medicine - First Hill
Julia.Ruby@Swedish.org

57. Mr. Michael Ninburg
Executive Director
Hepatitis Education Project
michael@hepeducation.org

58. Rob Jones, MD
910.322.7204
rgjones@cdchc.org

59. Anna Christina Cummings
Advanced Registered Nurse Practitioner
206.299.1660
cacummings@cdchc.org

60. Sarah B Hufbauer, MD
206.300.8152
sbhufbauer@cdchc.org

61. Neha Bakhai, MD
206.299.1900
neha.bakhai@swedish.org

62. Eliza Hutchinson, MD
248.752.8079
ehutchinson@cdchc.org

63. Mary Curiel, MD
206.355.6021
mecuriel@cdchc.org

64. Jeffrey M. Warner, D.O.
206.661.6696
jmwarner@cdchc.org

65. Aviva Rubin, RN, MSN, ARNP
678.772.5315
avivaerubin@gmail.com

66. King County Medical Society Board of Trustees
Contact: CEO, Nancy L. Belcher, PhD., MPA
206.621.9396
nbelcher@kcmsociety.org
67. Neighborcare Health
Contact: Richard Waters, MD
richardw@neighborcare.org
68. Washington Physicians for Social Responsibility
Contact: Max Savishinsky, Executive Director
206.547.2630
max@wpsr.org
69. Decriminalize Seattle
Contact: Aretha Basu
Arethabasu6@gmail.com
70. Covid 19 Mutual Aid
Contact: JM Wong
dameimee247854@gmail.com
71. Evergreen Treatment Services
Contact: Steve Woolworth, CEO
swoolworth@evergreentreatment.org
72. Thurston Asset Building Coalition
Contact: Malika Lamont
206.717.5064
Malika.lamont@defender.org
73. SEIU Healthcare 1199NW
Contact: Chris Lampkin, Political Director
SEIU Healthcare 1199NW
425.306.4986
chrisl@seiu1199nw.org

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- thomas.kuffel@kingcounty.gov
- tim.filer@foster.com
- timl@harriganleyh.com
- tom@christielawgroup.com

- tylerf@harriganleyh.com

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